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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL

No. 49

Introduced by Senator De León Senators De León and Stern

December 05, 2016

~~An act relating to the Budget Act of 2016.~~ An act to add Title 24 (commencing with
Section 120000) to
the Government Code, and to amend Sections 42501, 42504, 42505, and 42506 of the
Health and
Safety Code, relating to state prerogative.

LEGISLATIVE COUNSEL'S DIGEST

SB 49, as amended, De León. ~~Budget Act of 2016.~~ California Environmental,
Public Health, and Workers Defense Act of 2017.

(1) The federal Clean Air Act regulates the discharge of air pollutants into the atmosphere. The federal Clean Water Act regulates the discharge of pollutants into water. The federal Safe Drinking Water Act establishes drinking water standards for drinking water systems. The federal Endangered Species Act of 1973 generally prohibits activities affecting threatened and endangered species listed pursuant to that act unless authorized by a permit from the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

Existing state law regulates the discharge of air pollutants into the atmosphere. The Porter-Cologne Water Quality Control Act regulates the discharge of pollutants into the waters of the state. The California Safe Drinking Water Act establishes standards for drinking water and regulates drinking water systems. The California Endangered Species Act requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species and generally prohibits the taking of those species. The Protect California Air Act of 2003 prohibits air quality management districts and air pollution control districts from amending or revising their new source review rules or regulations to be less stringent than those rules or regulations that existed on December 30, 2002, except under certain circumstances. That act requires the state board to provide on its Internet Web site, and in writing for purchase by the public, a copy of the federal new source review regulations as they read on December 30, 2002, and a related document. This bill would prohibit state or local agencies from amending or revising their rules and regulations implementing the above state laws to be less stringent than the baseline federal standards, as defined, and would require specified agencies to take prescribed actions to maintain and enforce certain requirements and standards pertaining to air, water, and protected species. The bill would make conforming changes to the Protect California Air Act of 2003. By imposing new duties on local agencies, this bill would impose a state-mandated local program.

(2) Existing law provides for the enforcement of laws regulating the discharge of pollutants into the atmosphere and waters of the state. Existing law provides for the enforcement of drinking water standards. Existing law provides for the enforcement of the California Endangered Species Act.

This bill would authorize a person acting in the public interest to bring an action to enforce certain standards and requirements implementing the above-mentioned state laws if specified conditions are satisfied. The bill would make the operation of this authorization contingent on the occurrence of certain events.

(3) Existing federal law generally establishes standards for workers' rights and worker safety.

Existing state law generally establishes standards for workers' rights and worker safety.

This bill would prohibit a state agency that implements those laws from amending or revising its rules and regulations in a manner that is less stringent in its protection of workers' rights or worker safety than standards established by federal law in existence as of January 1, 2016.

Commented [JD1]: This sentence is here twice.

(4) Existing law authorizes a person to petition a court for the issuance of a writ of mandate to a public agency to compel the performance of an action required by law or to review a decision of the public agency.

This bill would expressly authorize a person to petition a court for a writ of mandate to compel a state or local agency to perform an act required by, or to review a state or local agency's action for compliance with, this measure.

(5) This bill would require state agencies, on a semi-annual basis, to report to the Legislature on compliance with the above requirements.

Commented [JD2]: How is this going to affect the Districts? Are we going to be required to perform some kind of reporting to ARB?

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

What does "the above requirements" mean? Item 4 or items 1-4?

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2016.

Vote: majority Appropriation: no Fiscal Committee: noyes Local Program: noyes
THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:
SECTION 1. Title 24 (commencing with Section 120000) is added to the Government Code, to read:

**TITLE 24. California Environmental, Public Health, and
Workers Defense Act of 2017 DIVISION 1. General
Provision**

120000. This title shall be known, and may be cited, as the California Environmental, Public Health, and Workers Defense Act of 2017.

DIVISION 2. Environment, Natural Resources, and Public Health

CHAPTER 1. Findings and Declarations

120010. The Legislature finds and declares all of the following:

(a) For over four decades, California and its residents have relied on federal laws, including the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. Sec. 1251 et seq.), the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.), and the federal Endangered Species Act (16 U.S.C. Sec 1531 et seq.), along with their implementing regulations and remedies, to protect our state's public health, environment, and natural resources.

(b) These federal laws establish standards that serve as the baseline level of public health and environmental protection, while expressly authorizing states like California to adopt more protective measures.

(c) Beginning in 2017, a new presidential administration and United States Congress will be in control of one party that has signaled a series of direct challenges to these federal laws and the protections they provide, as well as to the underlying science that makes these protections necessary, and to the rights of the states to protect their own environment, natural resources, and public health as they see fit.

(d) It is therefore necessary for the Legislature to enact legislation that will ensure continued protections for the environment, natural resources, and public health in the state even if the federal laws specified in subdivision (a) are undermined, amended, or repealed.

120011. The purposes of this division are to do all of the following:

(a) Retain protections afforded under the federal laws specified in subdivision (a) of Section 120010 and regulations implementing those federal laws in existence as of January 1, 2016, or January 1, 2017, whichever is more

stringent, regardless of actions taken at the federal level.

(b) Protect public health and welfare from any actual or potential adverse effect that reasonably may be anticipated to occur from pollution, including the effects of climate change.

(c) Preserve, protect, and enhance the environment and natural resources in California, including, but not limited to, the state's national parks, national wilderness areas, national monuments, national seashores, and other areas with special national or regional natural, recreational, scenic, or historic value.

(d) Ensure that economic growth will occur in a manner consistent with the protection of public health and the environment and preservation of existing natural resources.

(e) Ensure that any decision made by a public agency that may adversely impact public health, the environment, or natural resources is made only after careful evaluation of all the consequences of that decision and after adequate procedural opportunities for informed public participation in the decision-making process.

CHAPTER 2. Definitions

120020. For purposes of this division, the following definitions apply:

(a) "Baseline federal standards" means the authorizations, policies, objectives, rules, requirements, and standards contained in federal laws or federal regulations implementing the federal laws in existence as of January 1, 2016, or January 1, 2017, whichever is more stringent.

(b) "Baseline federal standards for other federal laws" means the authorizations, policies, objectives, rules, requirements, and standards contained in other federal laws or federal regulations implementing the other federal laws in existence as of January 1, 2016, or January 1, 2017, whichever is more stringent.

(c) "Federal law" means any of the following:

- (1) The federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).
- (2) The federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).
- (3) The federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.).
- (4) The Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).

(e) "Other federal laws" means any other federal law not specified in paragraphs (1) to (4), inclusive, of subdivision (c) relating to environmental protection, natural resources, or public health.

(f) "less stringent than the baseline federal standards"

CHAPTER 3.

Operative Provisions

Article 1. General

120030.

(a) Except as authorized by state law, a state or local agency shall not amend

Commented [JD3]: How is this going to affect the Rule 414 changes we will be proposing?

How is this going to affect the repeal of federal regulations that have not been adopted the California or the District yet?

Examples:
111(d) - Clean power plan and Landfills (Subpart Cf)
NSPS
NESHAPs

Remand of Halogenated Solvent Cleaning Final
Residual Risk Rule

Commented [JD4]: This means no backsliding from GHG requirements. Not sure if all districts have revised their Title V and NSR regulations to reflect the Court's decision on the applicability of these regulations to GHG emissions.

Commented [JD5]: This is very vague and can affect a lot more than the CAA. This is not limited to BACT or offsets, or even NSR.

Commented [JD6]: What about those have been vacated or changed as order by the Courts?

Boiler NSPS, GHG NSR,

Delisting of certain turbines for the NESHAP,
Remand of Halogenated Solvent Cleaning Final
Residual Risk Rule

This definition needs to address all court orders, vacatur, and proposed amendments that existed prior to 1/1/2017 but that have not yet been acted upon or finalized.

Commented [JD7]: Does this mean that the ATCM cannot be relaxed as approved under the 2012 waiver (2005 version)?

Commented [JD8]: We need to define this term. Otherwise it can be interpreted in many different ways.

Commented [JD9]: What does this mean? Does it mean that ARB can relax their regulation (like the ATCM) or that only under a mandate by Denate/Assembly bill?

or revise its rules and regulations to be less stringent than the baseline federal standards.

Commented [JD10]: How is stringency going to be determined? Line-by-line or over-all?

(b) Except as otherwise provided in state law, a state or local agency may establish rules and regulations for California that are more stringent than the baseline federal standards.

120031. To the extent authorized by federal law and except as authorized by state law, a state or local agency that is delegated the authority to enforce other federal laws or that implements the state law that is an analogue to the other federal laws shall not amend or revise its rules and regulations to be less stringent than the baseline federal standards for other federal laws, but may establish rules and regulations for California that are more stringent than the baseline federal standards for other federal laws.

Commented [JD11]: "Baseline federal standards" includes authorizations contain in federal law, such as the 2012 waiver for the 2005 ATCM. Does this mean that re cannot relax from the 2005 ATCM?

Article 2. Air

120040. The Legislature finds and declares the following:

(a) The California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) and the California Clean Air Act (Division 26 (commencing with Section 39000) of the Health and Safety Code) are the state analogue to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(b) The State Air Resources Board, air quality management districts, and air pollution control districts in California formulate and adopt the state implementation plans (SIPs) for California under the federal Clean Air Act as well as regional and local air quality regulations, and issue permits governing the emission of certain substances, including greenhouse gases, into the air.

120041. Except as otherwise authorized by state law, all of the following apply:

(a) To ensure no backsliding as a result of any change in the federal Clean Air Act or its implementing regulations, the State Air Resources Board, air quality management districts, and air pollution control districts shall maintain and enforce all air quality requirements and standards that are at least as stringent as required by the baseline federal standards, in addition to those required under state law.

(b) To the extent that the state board has not established a standard or requirement for an air pollutant for which a standard or requirement exists in the baseline federal standards, the State Air Resources Board shall adopt the standard or requirement to be at least as stringent as the baseline federal standards.

(c) The State Air Resources Board, regional air quality management districts, and air pollution control districts shall adopt SIPs for California that meet requirements that are at least as stringent as those required by the applicable baseline federal standards, in addition to those required by state law.

(d) If the federal transportation conformity program becomes less stringent than the applicable baseline federal standards, the State Air Resources Board,

Commented [JD12]: How is this going to be determined? By whom?
What if there's a disagreement between agencies?

Commented [JD13]: This would include EPA's Tailoring Rule as promulgated in May 2010 (amendments have not been finalized)

In order to implement electronic noticing, we are going to have to make the argument that the new EPA rule (electronic notice) is more stringent than newspaper noticing. This is going to be very difficult if we have to make a line-by-line comparison.

Commented [JD14]: Does this mean that the state has to adopt all NSPSs (as they existed prior to 2016/2017) as state standards?

air quality management districts, and air pollution control districts shall adopt and implement equivalent requirements that are at least as stringent as those required by the applicable baseline federal standards, in addition to those required by state law.

(e) If the United States Environmental Protection Agency no longer implements the prevention of significant deterioration program in accordance with the applicable baseline federal standards, then, where an air quality management district or air pollution control district has not received authority to issue prevention of significant deterioration permits, the State Air Resources Board shall immediately establish a state prevention of significant deterioration program to issue permits that are at least as stringent as the applicable baseline federal standards.

Commented [JD15]: This means NSPS for GHGs as applicable under the Tailoring Rule.

We would all have to change our regulations back to the Tailoring Rule.

So what happens if EPA does not adopt a SIL for GHGs? Is California going to do it?

Comments from David Lusk (BCAQMD):

3-13-17:

The immediate thoughts that come to mind is streamlining measures that improve efficiency without jeopardizing effectiveness; specifically, electronic public noticing. My first reading of the proposed bill would not allow for electronic noticing since this was finalized in 2016 and could arguably be said to be less stringent by some (who decides?). There's no clarifications in the bill to limit this to emissions related backsliding; it covers the whole regulatory aspect of the air quality and I did not see any provisions to allow exceptions.

Some other areas it may impact: source test methods, emission factors, reporting frequencies and requirements (what if an old rule required paper where a new electronic system is initiated?)

Since "Baseline federal standards" refers to authorizations, policies, objectives, rules, requirements, and standards, I believe it could refer to the program areas mentioned above.

A couple more things (some just semantics):

There could be a large regulatory burden to develop and adopt rules and regulations if existing federal regulations or portions of those regulations are deleted/rescinded/otherwise nullified. Districts have delegation of some programs and need the underlying rule language to enforce these programs. The authors thought of some of this concept in Article 2 (§§120040 & 120041). The language in 120041(b) requires the State board to adopt standards or requirements for an air pollutant but regulations like NSPS and NESHAPs are more industry related, not pollutant based. To implement and enforce, the Districts rely on the codified rule text and if that disappears, something will have

to be generated to replace it.

In Article 2, §120041 (a), the proposed language requires air districts to maintain and enforce all air quality requirements and standards that are at least as stringent as the baseline federal standards. This language seems to require districts to take on additional responsibilities beyond current commitments. For example, our District is not delegated for the federal Asbestos program, but based on the proposed language, I read this to make us responsible to enforcing this regulation regardless of whether we have delegation or not. I suppose someone could argue that we did not have the program authorization in 2016 or 2017 and, therefore, continuing to not implement the program would be at least as stringent as the baseline federal standards but "shall maintain and enforce" is pretty strong language.

We now have a district that has changed its name to an "air resources district". Not to be overly confusing but the bill language should probably address this distinction.

Article 3. Water

120050. The Legislature finds and declares the following:

(a) The Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) is the state analogue to the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), otherwise known as the federal Clean Water Act.

(b) The California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12 of Division 103 of the Health and Safety Code) is the state analogue to the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.).

(c) The State Water Resources Control Board administers water rights and, together with the regional water quality control boards, implements the federal Clean Water Act and the Porter-Cologne Water Quality Control Act to preserve, protect, enhance, and restore water quality by setting statewide policy, formulating and adopting water quality control plans, setting standards, issuing permits and waste discharge requirements, determining compliance with those permits and waste discharge requirements, and taking appropriate enforcement actions.

(d) The State Water Resources Control Board regulates public drinking water systems pursuant to the federal Safe Drinking Water Act and the California Safe Drinking Water Act to ensure the delivery of safe drinking water to Californians.

120051. Except as otherwise authorized by state law, the following apply:

(a) (1) To ensure no backsliding as a result of any change in the federal Clean Water Act, the State Water Resources Control Board and regional water quality control boards shall maintain and enforce all water supply and water quality standards that are at least as stringent as required by the applicable baseline federal standards, in addition to those required by state law.

(2) To ensure no backsliding as a result of any change in the federal Safe Drinking Water Act, the State Water Resources Control Board shall maintain and enforce all drinking water standards that are at least as stringent as required by the applicable baseline federal standards, in addition to those required by state law.

(b) (1) To the extent that the State Water Resources Control Board has not established a water supply or water quality standard or requirement for which a standard or requirement exists in the baseline federal standards, the State Water Resources Control Board shall adopt the standard or requirement to be at least as stringent as the baseline federal standards.

(2) To the extent that the State Water Resources Control Board has not established a drinking water standard or requirement for which a standard or requirement exists in the baseline federal standards, the State Water Resources Control Board shall adopt the standard or requirement to be at least as stringent as the baseline federal standards.

(c) (1) Waste discharge requirements and permits that are issued on and after January 1, 2018, shall be at least as protective of the environment and comply with all applicable water quality standards, effluent limitations, and restrictions as required by the applicable federal baseline standards, in addition to those required by state law.

(2) Drinking water supply permits that are issued on and after January 1, 2018, shall be at least as protective of public health and comply with all applicable drinking water standards as required by the applicable federal baseline standards, in addition to those required by state law.

(d) A water quality control plan adopted on or after January 1, 2018, shall be at least as protective of the environment pursuant to, and in compliance with, all applicable water quality standards, effluent limitations, and restrictions as required by the applicable baseline federal standards, in addition to those required by state law.

(e) When a waste discharge requirement or water quality control plan is renewed or amended, any water quality standards, effluent limitations, restrictions, and conditions shall be at least as protective of the environment pursuant to, and in compliance with, all applicable water quality standards, effluent limitations, and restrictions as required by the applicable baseline federal standards, in addition to those required by state law.

Article 4. Endangered and Threatened Species

120060. The Legislature finds and declares the following:

(a) The California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code) is the state analogue to the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).

(b) The California Endangered Species Act prohibits the taking of any species that

the Fish and Game Commission determines to be endangered or threatened, unless the Department of Fish and Wildlife allows for take incidental to otherwise lawful activity pursuant to subdivision (b) of Section 2081 of the Fish and Game Code.

120061. Except as otherwise authorized by state law, both of the following apply:

(a) To ensure no backsliding as a result of any change to the federal Endangered Species Act, all native species not already listed pursuant to Article 2 (commencing with Section 2070) of Chapter 1.5 of Division 3 of the Fish and Game Code that are listed as endangered or threatened pursuant to the federal Endangered Species Act as of January 1, 2017, shall be listed as an endangered or threatened species, as appropriate, pursuant to Article 2 (commencing with Section 2070) of Chapter 1.5 of Division 3 of the Fish and Game Code. The Fish and Game Commission may review and modify the listing of species pursuant to this section.

(b) Any new or revised consistency determination or incidental take permit issued to a permittee on or after January 1, 2018, shall only authorize incidental take if it requires conditions at least as stringent as required by the relevant baseline federal standards, including, but not limited to, any federal incidental take statement, incidental take permit, or biological opinion in effect and applicable to a permittee or project as of January 1, 2016, or January 1, 2017, whichever is more stringent. This subdivision does not modify the requirements of Section 2081 of the Fish and Game Code.

120062. To the extent authorized by the federal Reclamation Act of 1902 (Public Law 57-161) and other federal law, the California Endangered Species Act shall apply to the operation of the federal Central Valley Project.

DIVISION 3. Labor

Standards

CHAPTER 1.

Definitions

120100. For purposes of this division, the following definitions apply:

(a) "Federal law" means the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. Secs. 201 et seq.), the federal Occupational Safety and Health Act of 1970, as amended, (29 U.S.C. Secs. 651 et seq.), the federal Mine Safety and Health Act of 1969, as amended, (30 U.S.C. Secs. 801 et seq.), and other federal statutes relating to worker rights and protections and regulations, policies, guidance, standards, requirements, and specifications established pursuant to those federal statutes.

(b) "State agency" means a state agency designated by law to implement the federal law or its state analogue. **CHAPTER 2. Operative Provisions**

120110. Except as authorized by state law, a state agency shall not amend or revise its rules or regulations in a manner that is less stringent in its protection of workers' rights or worker safety than standards established pursuant to federal law in existence as of January 1, 2016.

120111. Except as otherwise provided in state law, a state agency may establish workers' rights and worker safety standards for California that are more stringent than those provided in federal law in existence as of January 1, 2016.

DIVISION 4. Miscellaneous

120200. Every state agency, including the Department of Justice, shall undertake all feasible efforts using its authority under state and federal law to implement and enforce this title. Notwithstanding Section 10231.5, every state agency that takes steps to enforce this title shall submit a report to the Legislature, in compliance with Section 9795 of the Government Code, at least once every six months describing its compliance with this title.

120201. (a) (1) (A) In addition to the enforcement provisions provided pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) or Division 26 (commencing with Section 39000) of the Health and Safety Code, an action may be brought by a person in the public interest to enforce the standards or requirements adopted pursuant to subdivision (b) of Section 120041 or to impose civil penalties for a violation of those standards or requirements pursuant to those acts, if both of the following are satisfied:

(i) The private action is commenced more than 60 days from the date that the person gave notice of an alleged violation that is the subject of the private action to the Attorney General and the district attorney, city attorney, or prosecutor in whose jurisdiction the violation is alleged to have occurred, and to the alleged violator.

(ii) Neither the Attorney General, a district attorney, a city attorney, nor a prosecutor commenced and is diligently prosecuting an action against the violation.

(B) A person bringing an action in the public interest pursuant to subparagraph

(A) and a person filing an action in which a violation of those acts is alleged shall notify the Attorney General that the action has been filed.

(2) Paragraph (1) is operative only if either of the following occurs:

(A) The United States Environmental Protection Agency revised the standards or requirements described in subdivision (b) of Section 120041 to be less stringent than the applicable baseline federal standards.

(B) The federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) is amended to repeal the citizen suit provision set forth in Section 7604 of Title 42 of the United States Code.

(b) (1) (A) In addition to the enforcement provisions provided pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), an action may be brought by a person in the public interest to enforce the standards or requirements adopted pursuant to paragraph (1) of subdivision (b) of Section 120051 or to impose civil penalties for a violation of those standards or requirements pursuant to that act, if the requirements set forth in clauses (i) and (ii) of subparagraph (A) of paragraph (1) of subdivision (a) are met.

(B) A person bringing an action in the public interest pursuant to subparagraph (A) and a person filing an action in which a violation of that act is alleged shall notify the Attorney General that the action has been filed.

(2) Paragraph (1) is operative only if either of the following occurs:

(A) The United States Environmental Protection Agency revised the standards or requirements described in paragraph (1) of subdivision (b) of Section 120051 to be less stringent than the applicable baseline federal standards.

(B) The federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.) is amended to repeal the citizen suit provision set forth in Section 1365 of Title 33 of the United States Code.

(c) (1) (A) In addition to the enforcement provisions provided pursuant to the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12 of Division 104 of the Health and Safety Code), an action may be brought by a person in the public interest to enforce the standards or requirements adopted pursuant to paragraph (2) of subdivision (b) of Section 120051 or to impose civil penalties for a violation of those standards or requirements pursuant to that act, if the requirements set forth in clauses (i) and (ii) of subparagraph (A) of paragraph (1) of subdivision (a) are met.

(B) A person bringing an action in the public interest pursuant to subparagraph (A) and a person filing an action in which a violation of that act is alleged shall notify the Attorney General that the action has been filed.

(2) Paragraph (1) is operative only if either of the following occurs:

(A) The United States Environmental Protection Agency revised the standards or requirements described in paragraph (2) of subdivision (b) of Section 120051 to be less stringent than the applicable baseline federal standards.

(B) The federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.) is amended to repeal the citizen suit provision set forth in Section 300j-8 of Title 42 of the United States Code.

(d) (1) (A) In addition to the enforcement provisions provided pursuant to the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), an action may be brought by a person in the public interest to enforce the requirements of the California Endangered Species Act for a species listed pursuant to subdivision (a) of Section 120061 or to impose civil penalties for a violation of those requirements, if the requirements set forth in clauses (i) and (ii) of subparagraph (A) of paragraph (1) of subdivision (a) are met.

(B) A person bringing an action in the public interest pursuant to subparagraph (A) and a person filing an action in which a violation of that act is alleged shall notify the Attorney General that the action has been filed.

(2) Paragraph (1) is operative only if either of the following occurs:

(A) The relevant federal agency revised the standards or requirements for the protection of species described in subdivision (a) of Section 120061 to be less protective than the applicable baseline federal standards.

(B) The federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.) is amended to repeal the citizen suit provision set forth in Section 1540 of Title 16 of the United States Code.

(e) An action or proceeding may be brought pursuant to Section 1085 or 1094.5 of the Code of Civil Procedure, as appropriate, on the grounds that a state or local agency has violated the requirements of this title or Section 42501 or 42504

of the Health and Safety Code.

(f) The court may award attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure, and expert fees and court costs pursuant to Section 1033 of the Code of Civil Procedure, as appropriate, for an action brought pursuant to this section.

120202. *The provisions of this title are severable. If any provision of this title or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.*

SEC. 2. *Section 42501 of the Health and Safety*

Code is amended to read: 42501. The Legislature finds and declares all of the following:

(a) For over 25 years, the federal Clean Air Act (42 U.S.C. Sec. 7401, et seq.) has required major new and modified sources of air pollution to be subject to a new source review program for nonattainment areas and for the prevention of significant deterioration, in order to ensure that those sources use the requisite level of

emission control, offset any new emissions, and comply with other requirements, as a means of ensuring that those new and modified sources do not adversely affect air quality.

(b) Requiring controls and emission offsets for new and modified sources ensures that industrial growth does not result in unacceptable levels of air pollution and that existing sources operate more cleanly over time by applying emission controls when those sources are overhauled or upgraded. Without these limits, air quality would degrade over time, and industrial growth, critical to the economic health of the state, would be foreclosed.

(c) The new source review program has been a cornerstone of the state's efforts to reduce pollution from new and existing industrial sources by requiring those sources to use the requisite level of emission controls based on the attainment status of the area where the source is located.

(d) The U.S. Environmental Protection Agency (U.S. E.P.A.) initially promulgated, and subsequently has revised, the new source review program to carry out the requirements of the federal Clean Air Act for preconstruction review of new and modified sources of air pollutants by the states.

(e) On December 31, 2002, the U.S. E.P.A., under the direction of the President of the United States, promulgated regulations that substantially weaken the basic federal new source review program (67 Fed.Reg. 80186-80289 (Dec. 31, 2002)). In promulgating the regulatory amendments, the U.S. E.P.A. claims that the new source review program has impeded or resulted in the cancellation of projects that would maintain or improve reliability, efficiency, and safety. This claim is contradicted by California's experience under the new source review programs of the air pollution control and air quality management districts.

(f) The amendments promulgated December 31, 2002, will drastically reduce the circumstances under which modifications at an existing source would be subject to federal new source review. The U.S. E.P.A. has also proposed a rule that will change the definition of "routine maintenance, repair and replacement." If that rule is finalized, it will significantly worsen the situation.

(g) The newly revised and proposed federal new source review reneges on the promise of clean air embodied in the federal Clean Air Act, and threatens to undermine the air quality of the State of California and thereby threaten the health and safety of the people of the State of California.

(h) Beginning in 2017, a new presidential administration and United States Congress will be in control of one party that has signaled a series of direct challenges to the federal Clean Air Act and the programs and protections they provide, as well as to the underlying science that makes these programs and protections necessary, and to the rights of the states to protect their own environment, natural resources, and public health as they see fit.

(h)

(i) Section 107 of the federal Clean Air Act (42 U.S.C. Sec. 7407) provides that the state has primary responsibility for meeting ambient air quality standards in all areas of the state, and that the means to achieve the

standards shall be set out in the state implementation plan, or SIP.

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(j) Section 116 of the federal Clean Air Act (42 U.S.C. Sec. 7416) preserves the right of states to adopt air pollution control requirements that are more stringent than comparable federal requirements. Moreover, the recent revisions to the federal new source review regulations provide that the states may adopt permitting programs that are "at least as stringent" as the new federal "revised base program," and that the federal regulations "certainly do not have the goal of 'preempting' State creativity or innovation." (67 Fed.Reg. 80241 (Dec. 31, 2002)).

SEC. 3. Section 42504 of the Health and Safety Code is amended to read:

42504. (a) No An air quality management district or air pollution control district may *shall not* amend or revise its new source review rules or regulations to be less stringent than those that existed on December 30, 2002, January 1, 2016, or January 1, 2017, whichever is more stringent. If the state board finds, after a public hearing, that a district's rules or regulations are not equivalent to or more stringent than the rules or regulations that existed on December 30, 2002, January 1, 2016, or January 1, 2017, whichever is more stringent, the state board shall promptly adopt for that district the rules or regulations that may be necessary to establish equivalency, consistent with subdivision (b).

(b) (1) In amending or revising its new source review rules or regulations, a district *may shall not* change any of the following that existed on December 30, 2002, January 1, 2017, if the amendments or revisions would

exempt, relax *relax*, or reduce the obligations of a stationary source for any of the requirements listed in paragraph (2):

- (A) The applicability determination for new source review.
- (B) The definition of modification, major modification, routine maintenance, or repair or replacement.
- (C) The calculation methodology, thresholds *threshold*, or other procedures of new source review.

(D) Any definitions or requirements of the new source review regulations.

(2) (A) Any requirements to obtain new source review or other permits to construct, prior to *the* commencement of construction.

(B) Any requirements for best available control technology (BACT).

(C) Any requirements for air quality impact analysis.

(D) Any requirements for recordkeeping, monitoring and reporting in a manner that would make recordkeeping, monitoring, or reporting less representative, enforceable, or publicly accessible.

(E) Any requirements for regulating any air pollutant covered by the new source review rules and regulations.

(F) Any requirements for public participation, including a public comment period, public notification, public hearing, or other opportunities or forms of public participation, prior to *the* issuance of permits to construct.

(c) In amending or revising its new source review rules or regulations, a district may change any of the items in paragraph (1) of subdivision (b) only if the change is more stringent than the new source review rules or regulations that existed on December 30, 2002, January 1, 2016, or January 1, 2017, whichever is more stringent.

(d) Notwithstanding subdivisions (a), (b), and (c), a district may amend or revise a rule or regulation if a district board, at the time the amendments or revisions are adopted, makes its decision based upon substantial evidence in the record, the amendments or revisions are submitted to and approved by the state board after a public hearing, and each of the following conditions is met:

(1) The amended or revised rule or regulation will do one of the following:

(A) Will replace an existing rule or regulation that caused a risk to public health or safety from exposure to a toxic material, a dangerous condition, or an infectious disease with a rule or regulation that provides greater protection to public health or safety.

(B) Will replace an existing rule or regulation that has been found to be unworkable due to engineering or other technical problems with a rule or regulation that is effective.

(C) Will allow an amendment to an existing rule or regulation that otherwise will cause substantial hardship to a business, industry, or category of sources, if all of the following criteria are met:

(i) The amendment is narrowly tailored to relieve the identified hardship.

(ii) The district provides equivalent reductions in emissions of air contaminants to offset any increase in emissions of air contaminants.

(iii) All reductions in emissions of air contaminants are real, surplus,

quantifiable, verifiable, enforceable, and timely. For the purposes of this clause, reductions are timely if they occur no more than three years prior to, and no more than three years following, the occurrence of the increase in emissions of air contaminants.

(iv) Information regarding the reductions in emissions of air contaminants is available to the public.

(D) Is a temporary rule or regulation necessary to respond to an emergency consisting of a sudden, unexpected occurrence and demanding prompt action to prevent or mitigate loss of or damage to life, health, property, or essential services and the temporary rule or regulation does not extend beyond the reasonably anticipated duration of the emergency.

(E) Will not, if the district is in attainment with all national ambient air quality standards, impair or impede continued maintenance of those standards or progress toward achieving *the* attainment of state ambient air quality standards.

(2) The amended or revised rule or regulation will not exempt, relax, or reduce the obligation of any stationary source under the rules or regulations of the district, as those rules or regulations existed on December 30, 2002, January 1, 2017, to obtain a permit or to meet best available control technology requirements. This paragraph only applies to a source that constituted a major source under the rules or regulations of a district that existed on December 30, 2002, January 1, 2017, and does not apply to any individual best available control technology determination.

(3) The amended or revised rule or regulation is otherwise consistent with this division.

(4) The amended or revised rule or regulation is consistent with any guidance approved by the state board regarding environmental justice.

SEC. 4. *Section 42505 of the Health and Safety Code is amended to read:*

42505. For purposes of this chapter, each district's "existing" new "new source review program" is comprised of those new source review rules and regulations for both nonattainment and prevention of significant deterioration for new, modified, repaired, or replaced sources that have been adopted by the district governing board on or prior to December 30, 2002, January 1, 2017, that have been submitted to the U.S. Environmental Protection Agency by the state board for inclusion in the state implementation plan and are pending approval or have been approved by the U.S. Environmental Protection Agency.

SEC. 5. *Section 42506 of the Health and Safety Code is amended to read:*

42506. In order to To assist in interpreting district rules and regulations governing new source review for nonattainment areas and for prevention of significant deterioration, the state board shall provide on its *Internet* Web site and in writing for purchase by the public, a copy of the federal new source review regulations as they existed on December 30, 2002, January 1, 2016, and January 1, 2017, and the United States Environmental Protection Agency's guidance document entitled, "New Source Review Workshop Manual: Prevention of Significant Deterioration and Nonattainment Area Permitting," (October 1990 Draft).

SEC. 6. *The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.*

SEC. 7. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by certain mandates in this act, within the meaning of Section 17556 of the Government Code.*

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SECTION 1. It is the intent of the Legislature to enact statutory changes relating to the Budget Act of 2016.